IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 65 OF 1997.

1. Dr. Joao Filipe do Rego

1(a) Maria Helena do Rego,
1(b) Maria da Piedade Silveira.
1(c) Edgar Francisco Silveira
1(d) Maria de Lourdes do Rego.
1(e) Antonio Augusto do Rego.
1(f) Gerardeta do Rego.,
1(g) Manuela Maria Saldanha
1(h) Francisco Saldanha,
all resident of 57 Defence Colony,
Alto Porvorim, Goa.

2. Smt. Maria da Piedade S. Ferandes,
do Rego, r/o Santa Cruz,
Ilhas, Goa. .... Appellants.

Versus

1. Dy. Collector (Dev.) &
Land Acquisition Officer, Panaji.

2. The Chief Town Planner,
Town & Country Planning Dept.,
Panaji, Goa. .... Respondents.

Shri J.E. Coelho Pereira, Senior Advocate with Shri J. Godinho, Advocate for the Appellants.

Shri S.S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Government Advocate for the Respondents.

CORAM: KSHITIJ R. VYAS, C.J. &
SMT. RANJANA DESAI, J.

DATE: 5th JUNE, 2006.

ORAL JUDGMENT : (PER KSHITIJ R. VYAS, C.J.)

The appellants in this appeal challenge the Judgment and Award passed in Land Acquisition Case No. 42/1990 dated 27.01.1997 by the learned District Judge, Panaji, whereby the learned trial Judge dismissed the reference made by the appellants under Section 18 of the Land Acquisition Act.

2. The appellants are the owners in possession of the property bearing P.T. Sheet No. 141 and Chalta No.1 situated at Miramar, Panaji, Goa. The respondents, by Notification, under Section 4 of the Land Acquisition Act, published in the Official Gazette dated 18.2.82 acquired about 2502 sq.metres of land of the above mentioned property at the rate of Rs.75/- per square metre. The appellants being dissatisfied with the compensation awarded, sought reference to the District Court for enhancement of compensation from Rs.75/- to Rs.1000/- per sq.m. As stated above, the learned District Judge dismissed the reference. Hence the present appeal.

3. The learned counsel for the appellants submitted that the Reference Court rejected the reference solely on the ground that the appellants have failed to prove the sale deeds produced by the appellants. He submitted that the appellants are not required to prove the sale deeds in

view of the law laid down by the Apex Court in ***Cement Corpn. Of India Ltd. v. Purya and Others reported in (2004) 8 SCC 270***

4. We have gone through the records and proceedings as well as the reasoning of the learned District Judge. In order to substantiate the claim of Rs.1000/- per sq.m. which was restricted to Rs.600/- per sq.m., as can be seen from the Judgment, the appellants have placed reliance on certain Sale Deeds. Sale Deed dated 18.6.82, under which 228 sq. metres situated about 1.5 kms. from the suit plot were sold at the rate of Rs.400/- per sq.m. (Exh.AW.1/B). The other Sale Deed is dated 22nd December, 1982 under which 537 sq. metres of land was sold at the rate of Rs.494.20 and that plot is situated about 1.4 Kms. from the suit plot. Agreement of Sale dated 15.1.82 in respect of 575 sq. metres agreed to be sold at the rate of Rs.565/- per sq. metre and situated about 600 metres from the suit plot was relied upon as Exhibit AW.1/D. Apart from that, the report of the valuation of the suit plots based on Sale Deeds is also on record. One more Sale Deed in respect of the plots agreed to be sold at Exh.AW1/D dated 15.8.87 at Exhibit AW.2/A wherein the valuer has valued the suit plot at Rs.550/- per square metre is on record. The learned Trial Judge while referring to the aforesaid documents, observed that none of the sale deeds have been proved by examining either the vendor or vendee or the witnesses to those sale deeds. That being the position, no reliance can be placed on these sale

deeds for the purpose of determining the market price.

5. The Apex Court in the case of Cement Corpn. of India Ltd. (Supra) by construing the provisions of Section 51-A of the L.A. Act observed that:-

" The said provisions may be read literally and having regard to the ordinary meaning which can be attributed to the term "acceptance of evidence" relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the record evidencing a transaction, nothing further is required to be done. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof (emphasis supplied). This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word " may ". A discretion, therefore has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors. "

6. In para 31 of the Judgment, the Apex Court has further observed :-

" The reasoning in **Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah (2001) 3 SCC 530,** that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law ".

7. The above position, in our opinion, confers discretion upon a Court to accept the sale deeds as admissible evidence without examining the vendor or vendee after taking into consideration the relevant factors. In the instant case, the learned Trial Judge, without taking into consideration, the relevant factors, rejected the sale deeds produced on record on the sole ground that none of the sale deeds have been proved by examining either the vendor or vendee or witnesses to those deeds. The said reasoning, in our opinion, are required to be rejected in view of the law laid down by the Apex Court in the aforesaid case. Apart from the fact that a vendor or vendee are not examined to prove the said case, the appellants have, in fact, examined the valuer to prove the market value of the land in question, which in our opinion the learned Judge has not considered that aspect of the case also. In view of this, the Judgment and Award passed by the learned Reference Court is required to be set aside.

8. We, accordingly, set aside the Judgment passed in L.A.C.

No.42/90. In our opinion, the matter is required to be decided afresh, in the light of the Judgment of the Apex Court in the case of Cement Corpn. Of India Ltd. v. Purya (2004) 8 SCC 270.

9. In the result, this appeal is allowed. The matter is remitted to the Reference Court, with a direction to decide the same afresh, in the light of the observations made above and in view of the Judgment passed by the Apex Court in the case of Cement Corpn. Of India Ltd. (Supra). In view of the statement made by the learned counsel for the appellants that no further evidence will be led by the appellants and they will simply rely on the documents already produced on record, for which no further proof is required and since the Reference Court to decide the matter on those documents only for the purpose of determining the market value, the reference Court shall decide the same as early as possible and in any case not later than 30th July, 2006. The office shall forward the records and proceedings to the trial Court forthwith. Parties shall appear before the trial Court on 14th June, 2006 at 10.00 a.m.

KSHITIJ R. VYAS, C.J

SMT. RANJANA DESSAI, J.

sl.